SUPREME COURT, U. S.

No. 1158

Supreme Court, U.S.
FILED
JUN 25 1971
CLERK

70-215

In the Supreme Court of the United States

OCTOBER TERM, 1970

BARBER LOFTY, PETITIONER

v.

ELLIOT RICHARDSON, SECRETARY OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1758

BARBER LOFTY, PETITIONER

v.

ELLIOT RICHARDSON, SECRETARY OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

---

1. The facts, as stated by the court of appeals (Pet. App. 20-21), are undisputed. Petitioner, a resident of Michigan, was awarded monthly social security disability benefits for himself and his family, beginning in August of 1966, of $269.80. But, because he received $57.00 a week in state workmen's compensation and later received a lump sum workmen's compensation settlement of $10,722.00, the Secretary, acting pursuant to Section 224 of the Social Security Act, 42 U.S.C. (Supp. V) 424a, withheld all but $25.80 from those monthly benefits until his workmen's compensation, prorated at the rate of $57.00 a week, was exhausted.

After exhausting his administrative remedies, petitioner brought this action in the district court, alleging that Section 224 deprived him of due process of law as guaranteed by the Fifth Amendment because it discriminates irrationally between recipients of workmen's compensation benefits, whose social security benefits are reduced, and all other recipients of benefits or awards, such as private insurance beneficiaries and successful tort plaintiffs, whose social security benefits are not reduced. Finding that there was a rational justification for the classification embodied in Section 224, the district court granted summary judgment for the Secretary. The court of appeals affirmed (Pet. App. 19-35).

2. The issue raised by petitioner—whether Section 224 is constitutional—is presented in two cases now pending before this Court. *Richardson* v. *Belcher*, No. 1091, 1970 Term (probable jurisdiction noted, March 1, 1971); *Bartley* v. *Richardson*, No. 703, 1970 Term.[1] As the decisions in those two cases will be dispositive of petitioner's claim, this Court should defer action on the petition pending such decisions.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1971.

---

[1] We are providing petitioner's counsel with copies of our Jurisdictional Statement in No. 1091 and our Motion to Affirm in No. 703.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 428736 729